

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ESTER KELEN,  
individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

NORDSTROM, INC. and  
NORDSTROM FSB d/b/a  
NORDSTROM BANK,

Defendants.

Civ. Act. No. 16-cv-1617 (PAE)

**DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

PLEASE TAKE NOTICE that Defendants Nordstrom, Inc. and Nordstrom fsb d/b/a Nordstrom Bank (collectively "Nordstrom"), by and through their undersigned counsel, hereby move the Court, as soon as counsel may be heard, for an order dismissing Plaintiff's Second Amended Complaint for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of this Motion, Nordstrom submits the attached Memorandum of Law and Declaration of David Fioccola.

Dated: New York, New York  
August 01, 2016

MORRISON & FOERSTER LLP

By: /s/ David J. Fioccola  
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and Nordstrom fsb d/b/a Nordstrom Bank*